



General Assembly

Distr.: General
3 November 2017

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Twenty-ninth session
15–26 January 2018

**National report submitted in accordance with paragraph 5 of
the annex to Human Rights Council resolution 16/21***

Tonga

* The present document has been reproduced as received. Its content does not imply the expression of
an opinion whatsoever on the part of the Secretariat of the United Nations.

42.17.19675E1



Please recycle



Contents

	<i>Page</i>
I. Introduction	3
II. Methodology and process for preparing the report	3
A. Methodology for preparing the report.....	3
B. Process for preparing the report	3
III. Implementation of recommendations from the previous cycle (2013).....	4
A. Treaty ratifications, treaty reporting and overall work with human rights mechanisms	4
B. Democratization and law reform process.....	6
C. Gender equality	7
D. Thematic human rights issues (prevention of torture, rights of children, freedom of expression, disabilities, anti-corruption).....	12
E. National human rights mechanism.....	14
F. Promotion and protection of human rights, education and public awareness	15
IV. Challenges which would require the support of the international community	16
Annex I	
Implementation status of the recommendations for UPR Tonga (2 nd cycle – 15 th session)	

I. Introduction

1. The Kingdom of Tonga's second national report was reviewed by the Human Rights Council Working Group on the Universal Periodic Review on 21 January, 2013. The Human Rights Council selected a Troika from the countries of Angola, Costa Rica and Pakistan to facilitate the review of Tonga. The Tonga delegation was headed by Lord Vaca, Minister of Internal Affairs, accompanied by Mr. 'Aminiasi Kefu, Solicitor General and Mr. Sonata Tupou, Chargé d'Affaires, Tonga High Commission, London.

2. Tonga received Eighty-eight recommendations during the interactive dialogue with the Working Group. Fifty-three recommendations presented by States were acceptable to Tonga, as they were currently pursued or already achieved by Government. Three recommendations were already implemented. However, twenty-eight recommendations were quite sensitive to Tonga's circumstances, and they needed further careful consideration. The four recommendations that were not accepted were against Government policy and priorities.¹

3. A further statement was prepared by Tonga in response to the twenty-eight recommendations that were deferred. This was submitted for final consideration of the Human Rights Council in its 23rd Session whereby Tonga's second report was adopted by the Working Group on 06 June 2013.

4. Tonga continues to progressively work on the recommendations of the Universal Periodic Review through its relevant stakeholders with the support of the official institutions and intergovernmental agencies.

II. Methodology and process for preparing the report

A. Methodology for preparing the report

5. In accordance with the establishment of the Government UPR Working Group (UPR – WG) by His Majesty's Cabinet on 27 January 2012², the Prime Minister's Office (PMO), as Chair with the Attorney General's Office (AGO) instigated the preparations for Tonga's Third National Report on the Universal Periodic Review to the United Nations Human Rights Council.

6. The UPR-WG commenced the drafting of the report in consultation with the following Government ministries and departmental agencies: Ministry of Foreign Affairs, Ministry of Education and Training, Ministry of Health, His Majesty's Armed Forces, Ministry of Internal Affairs – Women's and Disabilities Divisions, Ministry of Justice, Ministry of Land and Natural Resources, Ministry of Meteorology, Energy, Information, Disaster Management, Climate Change and Communications (MEIDECC) – Environment and Information Departments, Ministry of Police, Prisons Department and the Bureau of Statistics.

B. Process for preparing the report

7. Since the 2nd UPR review in 2013, Tonga has participated in one regional capacity building program that was organized by the United Nations High Commissioner for Human Rights (OHCHR) in November 2015. Tonga also took part in the Regional Consultation on the UPR for Pacific States in October 2016 that was organized by the Pacific Community Regional Rights Resource Team (SPC RRT).

8. Based on recommendations from the regional workshop and consultation, the Tonga UPR-WG commenced preparations by contacting the relevant government agencies and stakeholders to re-establish contacts and familiarize them with the UPR report and process. They discussed the recommendations from the first and second report and collected updates and progress reports on the thematic areas of the UPR.

III. Implementation of recommendations from the previous cycle (2013)

A. Treaty ratification, treaty reporting and overall work with human rights mechanisms

1. Consider and take steps to ratify the United Nations Convention Against Torture³

9. Tonga still has time to consider the ratification of the Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) before 2018.

10. In October 2016 Tonga was represented at the Convention Against Torture Initiative (CTI) Regional Workshop held in Fiji.

11. In June 2017, His Majesty's Cabinet established a Committee comprised of relevant Ministries, Department and Agencies to consider the ratification of CAT and to review relevant legislation.⁴

12. The Tonga Police in their proposal for the establishment of a Committee to consider the ratification of CAT stated that CAT will provide a legal framework for a "zero tolerance" approach to torture and abuse, assist police, corrections facility officers and other forces by its clear guidance on the issue of accountability for their actions.

13. CAT promotes the development of good governance, the rule of law and security through mechanisms of accountability and international review.

14. In October 2017, Tonga was represented at a Roundtable Meeting with the Convention against Torture Initiative and the Office of the High Commissioner for Human Rights for ratification of the UN Convention against Torture.

15. However it is important to note that despite the fact Tonga has not ratified CAT, Tonga does not tolerate police brutality. Five police officers were prosecuted for manslaughter and assault on a Tongan New Zealand Police Officer who was visiting Tonga. Two of the police officers were convicted of manslaughter and one Police Officer was convicted of common assault. The civilian involved was convicted on a separate trial by a judge and jury with causing grievous harm to the victim.⁵

16. Tonga still has a whipping provision in its *Criminal Offences Act* [Cap 18F]. Tongan case laws has set aside whipping sentences. This is seen in the case of *Fiangapo v R* [2010] Tonga LR 124 – the sentence of whipping was set aside, as it was imposed. The Court of Appeal held that whipping could be considered unlawful in Tonga. The prohibition against torture is part of customary international law and is a rule from which states cannot derogate, whether or not they are a party to the various treaties such as CAT which prohibit it.⁶

17. The *Education (Schools and General Provisions) Regulations 2002* provides that under no circumstances shall a teacher inflict corporal punishment on any student.⁷

18. The *Family Protection Act 2013* also protects women and children from abuse and corporal punishment.

2. Consider ratification of core international human rights treaties and optional protocols (ICCPR, ICESCR, CRPD and CRC OPS)⁹

19. In May 2017, Tonga was represented at a Training on the Benefits to Pacific Island Nations of National Mechanisms for Human Rights Implementation/ Reporting and the Two Covenants, ICCPR and ICESCR hosted by the Office of the Human Rights Commissioner in Nadi, Fiji.

20. In June 2017, His Majesty's Cabinet established a Committee comprised of relevant Ministries, Department and Agencies to consider the ratification of CAT and to review relevant legislation.¹⁰ The Tonga Police is piloting the process for the ratification of CAT.

21. Although Tonga has not ratified ICCPR, the Tongan laws continue to comply with the ICCPR principles as seen in the case of *R v Fola* [2005] Tonga LR 404, where the Tongan courts applied the principles of ICCPR despite Tonga's non-ratification.

22. Although Tonga has not ratified ICESCR, the principles of ICESCR are incorporated in the Tongan laws, which includes laws to the right to adequate health care, right to education, and the right to a decent home, food, shelter, the right to fair wages and equal remuneration for equal value and right to take part in cultural life:

(a) New *Education Act 2013* provides for that the compulsory school age is between 4 and 18 years of age.¹¹ This was an increase from the previous compulsory school age of 6 to 13 years. It also imposes an obligation on parents to have a duty to have the child educated.¹² The Act also introduces the principle of inclusive education for children with special needs, all children under the age of 19 year has a right to access quality education in Tonga, irrespective of the child's gender, religion, socio-economic status, physical condition and location.¹³

(b) Tonga continues to have a Health Services Act 2010, Medical and Dental Practice Act 2001, Mental Health Act 2001, Public Health Act 2008, Tobacco Control Act 2002 and other pieces of legislation continue to govern and monitor medical and health services in Tonga. The Ministry of Health is currently reviewing some of these legislation to ensure that it has more modern provisions and to ensure that it is in line with international standards.

(c) Tonga has an Employment Relations Bill 2013 which is currently under consultation. This Bill ensures the fundamental rights and principles at work which includes prohibition of forced labour, freedom from discrimination, equal remuneration for work of equal value, freedom of association and rights to bargain collectively.¹⁴ Tonga is hopeful, that the consultations on this Bill will be complete and the Bill will be submitted to the Legislative Assembly for further debate.

23. On 6 June 2014 His Majesty's Cabinet approved the Tonga National Policy on Disability Inclusive Development 2014-2018 and for the Tongan Government to ratify the Convention on the Rights of Persons with Disabilities.¹⁵

24. On 20 January 2015, the Social Protection and Disability Division was established under the Ministry of Internal Affairs as a focal point for persons with disabilities.

25. In 2016 the Social Protection and Disability Division worked together with the Attorney General's Office to look at reviewing legislation to expedite the ratification of CRPD.

26. In 2017 the Social Protection and Disability Division conducted public consultations to all the Tongatapu districts and the outer islands on the Convention to create awareness before ratification.

27. In June 2017, the Social Protection and Disability Division engaged technical assistance from the Pacific Islands Forums Secretariat and the UNESCAP Pacific Office to examine the CRPD ratification and legislative implementation.

28. Tonga still has time to ratify the CRPD by 2018.

29. Although Tonga has not ratified the CRC Optional Protocols, the Tongan laws are in line with the Protocols. The *Pornography Control Act 2002* criminalizes the sale or hire of pornographic material.¹⁶ The *Criminal Offences Act* [Cap 18] criminalizes any person who publishes child pornography, produces child pornography or possesses child pornography;¹⁷ criminalizes trading in prostitution¹⁸; and criminalizes a person who has carnal knowledge of a child or young person under the age of 12 years.¹⁹

3. Consider ratification of the Rome Statute of the International Criminal Court and fully align it's legislation with all obligations under the Rome Statute²⁰

30. The Attorney General's Office sought the assistance of the International Committee of the Red Cross in drafting a policy paper to His Majesty's Cabinet proposing the ratification of the Rome Statute on the International Criminal Court in 2013.

31. Tonga is considering domesticating specific legislation for the Rome Statute to apply within the Kingdom. This includes costs and the extent of the actual legislative review.

32. Tonga is hopeful to ratify the Rome Statute by 2018.

4. Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Their Families) as well as the ILO Convention²¹

33. Tonga became the 187th member state of the International Labour Organization (ILO) with effect from 24 February 2016. By becoming a member of the ILO, Tonga is indicating its commitment to decent employment opportunities, enhancing social protection and strengthening dialogue on work-related issues.²²

34. Tonga has not ratified any ILO Conventions in its accession at this point of time, any ratification is subject to prior consultation with key stakeholders.²³

35. In October 2017, Tonga was represented in the Pacific Consultation on Alliance 8.7 – Ending child labour, forced labour, modern slavery and human trafficking and preparing for the 4th Global Conference on the Sustained Eradication of Child Labour in Nadi, Fiji.

36. The Ministry of Internal Affairs has a specific division to looking after the interest of seasonal workers under the Recognized Seasonal Employer (RSE) Program by the government of New Zealand and the Australian Pacific Seasonal Worker Program Scheme (SWP).²⁴

37. The Tongan Government gives special attention to ensure current seasonal workers are entitled to all relevant benefits and are not abused.²⁵

B. Democratization and law reform process

1. Continue the momentum on the democratization process to ensure equal and full enjoyment of fundamental and human rights²⁶

38. Tonga had its second general election under the new constitutional and political structure on 27 November 2014.

39. On 29 December 2014, Mr. Samuela 'Akilisi Pohiva, People's Representative for Tongatapu 1 was nominated by the Assembly to be appointed by the Monarch as Tonga's

second elected Prime Minister under the new 2010 reforms. Mr. Pohiva became the first commoner to be democratically elected by a predominantly elected Parliament.

40. The new Prime Minister then went on to nominate eleven Representatives from the Assembly, one Noble's Representatives and ten People's Representatives to be appointed by His Majesty as Cabinet Ministers.²⁷

41. His Majesty's Cabinet continued as the highest executive body, replacing the Privy Council.

42. As expected with a new Cabinet, there was a number of re-shuffling of Ministerial portfolios and dismissals by the Prime Minister in his years in Office.

43. The changes in Government resulted in a submission to the Speaker of a motion for a vote of no confidence by the Noble's Representatives. This motion was tabled on Monday 20 February 2017²⁸ and it took 7 days to consider. It culminated in the rejection of the motion on 27 February 2017 by a vote of 14–10 and one representative abstained from voting.²⁹

44. The Legislative Assembly was dissolved by an Instrument of Dissolution in accordance to clauses 38 and 77(2) of the Act of Constitution of Tonga (Cap 2) effective on 24 August 2017. The next general election for Tonga will be held on 16 November 2017.³⁰

2. Continue to uphold and defend the fundamental values enshrined in its constitutional history³¹

45. Tonga continues to be committed to maintaining the core human right values that are protected in the Tongan constitution. These include: the right to live in freedom; freedom to own and dispose property; freedom from slavery; equality of application of laws to all, regardless of gender, class, ethnicity or any classification; freedom of worship; freedom of expression; freedom of petition; freedom from unlawful detention (*habeas corpus*); right to fair trial; protection from double jeopardy; and, protection from unlawful arrest and search.

C. Gender equality

1. Promote and increase women's participation in political life and formal decision making levels³²

46. Tonga has continued to make commitments on the international, regional and national level to improve women's political participation.

47. Tonga is committed to Sustainable Development Goal 5 to achieve gender equality and empower all women and girls.

48. 16 of 106 candidates for the 2014 General Elections were women, despite the high number of women, none were successful in the elections.

49. However, after a Supreme Court ruling in January 2016³³ one of the members of Parliament was forced to vacate his seat. This led to a by-election in July 2016 that resulted in a female candidate being elected into Parliament.

50. The November 2017 Elections has a total of 86 candidates, where 15 of those candidates are women.

51. Tonga continues to have a Women's Division under the Ministry of Internal Affairs to look after women affairs and the implementation of the *Family Protection Act 2013*.

52. Tonga announced that it is ready to ratify CEDAW at the 59th session of the Commission on the Status of Women at the UN General Assembly in New York on 12 March 2015.

53. In September 2015, the third and Final Report for Tonga and the Millennium Development Goals was submitted to the United Nations the report showed progress and achievements to eliminate gender disparity in primary and secondary education.

54. The Tongan Government introduced the Tonga Strategic Development Framework 2015-2025 in 2015 and one of the seven national outcomes is for a more inclusive sustainable and empowering human development with gender equality. This is supported by the following Organisational Outcomes under the Social Pillar:

(a) improve gender equality by implementing the government's gender development policy and ensuring a more balanced and effective engagement by both men and women in decision making and social, economic and political institutions (OO2.1e);³⁴

(b) while recognizing the high status of women in Tongan culture, ensure that improved gender balance is built into all policies, plans, laws and initiatives (OO 2.3f);³⁵

(c) develop an education system that better addresses the needs of both girls and boys and ensures a better gender balance at all stages of schooling (OO 2.4d);³⁶

(d) build strong gender awareness, sensitivity to differences in needs in abilities, and other criteria into all programs.(OO 2.7f);³⁷

(e) improve understanding of the many ways in which people resident in Tonga and overseas (in particular the Diaspora) interact in beneficial ways, and support the development of institutional arrangements and international agreements which facilitate this interaction - taking account of gender and other differences(OO 2.8a).³⁸

55. Tonga was represented on the Promoting Evidence Based Policy Making for Gender Equality: Workshop on Gender training needs and design and Tonga Gender profile information and consultation meeting held in July 2017.

56. This was an Asian Development Bank (ADB) project aimed to develop a national capacity for gender mainstreaming in health and discussions on the role of statistics and gender indicators in decision making and identify priorities for training and developing capacity in this area.

57. Women are being increasingly represented in managerial and higher administrative positions in both government and private sectors. Since 2013, 13 women have held or currently holding Chief Executive Officer positions in Government.³⁹

58. Tongan women also hold diplomatic positions overseas. To date the Ambassador of Tonga to Australia, Ambassador of Tonga to Japan, Tonga Consul General in San Francisco and Honorary Consulate of France, Netherlands and Sweden are women.

59. The Public Enterprise Boards have women as Directors, Deputies or members including Tonga Communications Corporation, Tonga Broadcasting Corporation, Tonga Water Board, Tonga Post & Fast Print Ltd, Tonga Airports Limited, Tonga Market Ltd and Ports Authority.

60. Women also hold prominent roles in the private sector as successful medium to small business owners and managers of retail stores; café and restaurants; hotel, resort and tourist facilities, catering services, handicraft and local produce market stalls, pre-school and day-care child services and more.

61. Tongan women also hold leadership roles in the regional and international organizations, for instance a Tongan woman was appointed to the position of United

Nations High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS) in May 2017. Thus becoming the first Tongan to hold such a senior position in the United Nations.

62. In 2014, the Legislative Assembly held the first ever Practice Parliament for Women in Tonga. This event was to increase the potential of women to become effective political leaders. It was to encourage and empower women to achieve their potential as leaders. This was supported by the United Nations Development Programme (UNDP).⁴⁰

63. Tonga launched its Tonga Revised National Policy on Gender and Development in May 2014.

64. This Gender Policy was a result of collective partnership between Government, the Private Sector, Civil Society, the Community, and Development Partners.

65. The Tonga Revised National Policy on Gender and Development identified six Gender Equity Issues in Tonga namely:

- Family and Social Issues;
- Unequal access to employment and productive assets;
- Unequal Political Representation and Participation in Decision-Making;
- Different vulnerability, roles and capacity to respond to disasters;
- Environmental and climate change not properly acknowledged, by national strategies;
- Vulnerable women; and
- The Weak enabling environment for gender mainstreaming.

66. In June 2016, a one day National Women's Forum was held to discuss the progress on the National Policy on Gender and Development 2014-2018. Key stakeholders from the Women's Division of the Ministry of Internal Affairs, Tonga police, Ministry of Finance and other government departments with representatives from the Tonga National Centre for Women and Children, Women and Children Crisis Centre, Girl Guides, Civil Society and NGOs attended. The Minister of Internal Affairs speech stated that the statistics revealed gaps between men and women in regards to both genders in various aspects. In the 2011 census, there were 51,979 men and 51,273 women recorded in Tonga. Paid workers were 13,977 men and 9,721 women, while unemployment rate was at 33% for men and 33.3% for women. In addition a report from Tonga Police showed from 2000-09, 2,753 women had been physically abused.

2. Curb Violence against Women⁴¹

67. Tonga continues to be committed to eliminating violence against women.

68. The *Family Protection Act 2013* was passed by the Legislative Assembly on 4 September 2013. It was then proclaimed into force on 1 July 2014. The Act is to provide for greater protection from domestic violence, to introduce protection orders, clarify duties of the police and promote the health, safety and well-being of victims of domestic violence and related matters.⁴²

69. The *Family Protection Act 2013* is the first Act in Tonga to state that domestic violence is an offence. It defines domestic violence to include a person who threatens, intimidates or assaults a health practitioner or social service provider who is acting in pursuance of a duty of care.⁴³

70. The Women Division of the Ministry of Internal Affairs went through extensive consultations (including public and media consultations, television and radio programs) to ensure the public understands the concepts of the new *Family Protection Act 2013*.

71. The main mandate of the Women's Division is to monitor and ensure the effective implementation of the *Family Protection Act 2013*.

72. The Attorney General's Office has specific legal counsels who deal with domestic violence cases. The Office continues to work closely with the Domestic Violence Unit of the Tonga Police and meet regularly to ensure that domestic violence cases are prosecuted.

73. The Ministry of Justice continues to have on-going projects with Australian Government (DFAT) (Families Free of Violence), SPC/RRRT (Guidelines for Magistrates, Community Legal Centre) and Pacific Judicial Strengthening Initiative –PJSI- (Judicial training and strengthening relevant data collection capacities) on how to eliminate violence against women in Tonga.

74. In 2016 the *Evidence (Amendment) Bill 2016* was introduced to Parliament to remove the requirement for corroboration of evidence in sexual offences. This Amendment was a result of the case *Rex v Koloamatangi* CR 106/13 where the trial judge Cato J expressed concerns over the uncertainty whether corroboration was required in sexual complaints in Tonga. He stated there was no certain statutory requirement for corroboration in the Tongan Evidence Act in cases of sexual complaints.

75. The *Evidence (Amendment) Bill 2016* was introduced but it was not passed by Parliament. Tonga still needs time to fully grasp the need to remove corroboration evidence in cases of sexual offences.⁴⁴

76. Marital Rape is criminalized in the *Criminal Offences Act* [Cap 18] after the repeal of s.118(2) in 1999.

77. Tonga official launched the Unite Campaign Orange Day on the 25 June 2014. This was to show a united front in Tonga to end violence against women. It was supported by the Government, Civil Society, Non-Government Organisations and development partners like UNDP and Australian Aid.⁴⁵

78. Tonga Police continue to host a program to mark White Ribbon Day to end violence against women. The White Ribbon campaign in Tonga reminds the Tonga Police that they have a major role in ending violence against women by responding to cases of abuse and also showing the community that violence against women is unacceptable.⁴⁶

79. Tonga launched an International Women's Day Media Workshop which was held on 12 April 2013.

3. Enact laws to protect women in employment free from any form of discrimination⁴⁷

80. Tonga Police have policies that cover for equal opportunity for both sexes in their Recruitment, Promotion, Transfer and Leave Management policies.⁴⁸

81. His Majesty's Armed Forces have updated their Regulation and policies granting equal opportunity to women in the military, including permission to marry outside the military, serve in operations overseas and open to all trades except the infantry and on-board patrol boats.⁴⁹

4. Facilitate access of women to sexual and reproductive health⁵⁰

82. Tonga launched the National Integrated Sexual and Reproductive Health Strategic Plan (2014-2018) in 2014 with M & E frameworks and National Implementation Plan. This Plan was to attain high standard of health and quality of living through improved sexual and

reproductive health care service for all the people in Tonga at all levels, irrespective of status, sex, age or creed. This was supported by UNFPA and SPC.⁵¹

83. The Ministry of Health hosted a workshop on Family Planning Guidelines and Sexual Reproductive Health Policy to re-design and review the Sexual Reproductive Health Policy in Tonga on 25 July 2017. This was to also address the current adolescent pregnancy rate, where 30 births per 1,000 girls aged between 15 and 19.⁵²

5. Promote equality between sexes and discriminatory treatment related to sexual orientation or gender identity⁵³

84. The third and Final Report for Tonga on the Millennium Development Goals was submitted to the UN. This report revealed the progress and achievements of Target 3A.

85. The *Tonga Strategic Development Framework 2015-2025: A more progressive Tonga: Enhancing Our Inheritance* is the Kingdom's current national development framework.

86. One of the Seven National Outcomes is for a more inclusive, sustainable and empowering human development with gender equality. This is supported by the following Organisational Outcomes under the Social Pillar:

- improve gender equality by implementing the government's gender development policy and ensuring a more balanced and effective engagement by both men and women in decision making and social, economic and political institutions (OO2.1e);⁵⁴
- while recognizing the high status of women in Tongan culture, ensure that improved gender balance is built into all policies, plans, laws and initiatives (OO 2.3f);⁵⁵
- develop an education system that better addresses the needs of both girls and boys and ensures a better gender balance at all stages of schooling (OO 2.4d);⁵⁶
- build strong gender awareness, sensitivity to differences in needs in abilities, and other criteria into all programs.(OO 2.7f);⁵⁷
- improve understanding of the many ways in which people resident in Tonga and overseas (in particular the Diaspora) interact in beneficial ways, and support the development of institutional arrangements and international agreements which facilitate this interaction – taking account of gender and other differences(OO 2.8a).⁵⁸

87. Tonga hosted a Pacific LGBTQI Human Rights Conference in May 2015. The theme of this conference was "Our voices, our Communities, our Rights: Advancing Human Rights related to Sexual Orientation, Gender Identity & Expression in the Pacific".⁵⁹

88. The Tonga Leiti's Association was established in 1992 with a focus on improving the rights and celebrating the contribution of Leitis in Tonga and to respond to the HIV epidemic. The Association launched their Strategic Plan 2016-2020 in 2016. The vision of the Plan was for Tonga to respect and uphold the rights of person with diverse sexual orientations and gender identities.⁶⁰

89. One of the main goals of the Plan was to reduce stigma and discrimination against Leitis and People Living with HIV. The Plan also aims to educate and advocate on international human rights law, recent international developments and agreed principles such as the Yogyakarta Principles.⁶¹

90. Tonga Leitis Association continued to host a National Consultation with the theme "Together for a positive change – Leave no one behind" on October 2016. The Conference

covered topics which included the impact of current legislation on Leitis Living in Tonga and the impact of legislation changes on the communities.

91. In March 2017, the Tonga Leiti Association started a campaign in Tongan schools to try and reduce bullying of transgender students.⁶²

92. In October 2017, the Tonga Leitis Association conducted Trans Health Blueprint Workshop with the theme Transgender people should have access to good quality health care in Tonga. This aim of the workshop is to educate trans men and trans women on their health rights in the community.

D. Thematic human rights issues (prevention of torture, rights of children, freedom of expression, disabilities, anti-corruption)

1. Pay increased attention to rights of children, ensure equal public participation, nationality and rights of children born out of wedlock⁶³

93. There is no universal legal age of majority in Tonga, for instance, a Tongan male can own a piece of land at the age of 16, a person can marry at the age of 15 with parental consent, but cannot drive until the age of 21.

94. The definition of a child is not clearly defined in any legislation in Tonga. However Tonga is now working towards an age of majority, for instance the Births, Deaths and Marriage Registry is currently reviewing its marriage laws to increase the age of marriage.

95. The "Let Girls Be Girls" campaign was launched by the Talitha Project sponsored by SPC/RRRT and UN Women. This campaign was to support the increase in marriage age for females.

96. Tongan children born of either a Tongan father or mother are entitled to a Tongan nationality.⁶⁴

97. In November 2016, Cabinet approved the proposal to create and review a Criminal Justice Policy. Government condemns all forms of racial discrimination in the country; denounce and revile the violent criminal behaviour, victimizing the vulnerable members of our society such as women, young people and the aged.

98. A Cabinet Sub-Committee was established to create/review the Government criminal justice policy. The first Report of the Cabinet Sub-Committee on Criminal Justice Policy for Government was submitted to Cabinet in January 2017.⁶⁵

99. A FALE committee was established in 2014 to overlook social issues relating to children, for instance school fights and cyberbullying of children. This is chaired by the Chief Executive Officer for Education.

100. Children born out of wedlock remain to have different rights from those born in wedlock. Changes to this system would require cultural changes and rights. However it is important to note that children born out of wedlock can lease land, they are still entitled to a Tongan nationality and passport but they cannot inherit hereditary titles.

2. Take measures to reinforce protections for freedom of expression⁶⁶

101. The Freedom of Information (FOI) Policy approved by His Majesty's Cabinet in 2012, strengthens the Freedom of Speech, Expression and the Press that are guaranteed in Clause 7 of the Constitution of Tonga.

102. The FOI Unit was established within the Ministry of Information and Communications to coordinate all the information disclosure and dissemination within the

Public Service, providing policy advice and guidelines for compliance and the implementation of the FOI Policy that was formally launched on 28 June 2012.⁶⁷

103. In support of the FOI Policy, systems and structures, such as the FOI Unit and the Cabinet Steering Committee, were established to manage a phased process of implementation.

104. By 2014, implemented activities included the development of public education and awareness materials, training manuals and toolkits for public authorities, the conduct of training and sensitization sessions, and the preparation of budgets.

105. The Government continued to develop a Freedom of Information Law that will give to the people of Tonga a legally enforceable right to have access to government information. This is in keeping with an on-going commitment to encourage a more open, transparent and accountable government following the political reforms of 2010.

106. In April 2014, a technical legal advisor, funded by the United Nations Development Programme (UNDP), conducted a series of meetings and consultations with key FOI stakeholders. This is with a view to inform the development of a working draft FOI Law for public consultation.⁶⁸ Legislation for the FOI will need to be reviewed in consideration of the changes to the infrastructure and current developments of the nation.

107. On 10 June, 2017, Tonga celebrated *International Archives Day* for the very first time. This initiative, coordinated by the Cabinet Sub-Committee on the FOI Policy through the Ministry of Information and Communications, highlighted Tonga's commitment to start the Government's work towards better records management systems and information infrastructures.⁶⁹

108. When the current Government came into power, the integral function of disseminating Government information to the public was carried out by the Prime Minister's Office and the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change & Communications (MEIDECC). The revised processes to be utilized were clarified with the Prime Minister's Office being responsible for enquiries and the release of information relating to the Hon. Prime Minister and his initiatives.

109. There are currently five newspaper operators in Tonga, two television channels and 5 radio stations that provide news daily for the Kingdom.

3. Promote human rights education through international and regional cooperation⁷⁰

110. Efforts have been made to strengthen human rights education, training of public officials and the participation of civil society in the promotion and protection of human rights through international and regional cooperation.

111. Tongan Government provides free Primary Education for Tongan children who attend the Government Primary Schools.

4. Consider signing and ratifying CEDAW and consider issues relating to equal right of women to administer property and the equal right to ownership, acquisition, management, enjoyment and disposal of property⁷¹

112. On 6 March 2015, His Majesty's Cabinet approved for the Tonga to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

113. On 9 March 2015, Tonga made an international commitment during the 59th Session of the Commission on the Status of Women (CSW).

114. Tonga is currently working on revising the reservations to CEDAW to be consistent with issues raised by the public before it can proceed to the ratification process.

115. The *Royal Commission Final Report* recommended that a woman who is a Tongan subject upon attaining the age of 21 years has the right to apply for grant of a town allotment, which can be registered under her name. Upon her death, the land shall devolve according to the succession laws, which shall be amended accordingly. For now women should not be allowed to apply for and gain a registered tax allotment. The status quo should remain with men being allowed to hold tax allotment.⁷¹

116. The *Royal Land Commission* recommended that the termination of an unmarried daughter's right upon proof of her having committed adultery or fornication is repealed.⁷²

117. The *Royal Land Commission* recommended that the restriction on the inheritance of a daughter when she married should be removed. Where there is no male heir of the deceased landholder, his daughters shall succeed the land.⁷³

118. The *Royal Land Commission* recommended that the rights of a widow to land that has been newly acquired by her husband should allow her to lease or mortgage the land with the consent of the heir, and where she had no children with her husband, then consent is not required.⁷⁴

119. Work still needs to be initiated to implement the recommendations made by the Royal Land Commission.

120. However it is important to note that the Chief Executive Officer for the Ministry of Lands, Survey and Natural Resources is a female.

5. Consider the implementation of recommendations by special procedures so that there are institutional safeguards against harsh treatment by police and security forces⁷⁵

121. Tonga still has time to incorporate the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the Bangkok Rules, as part of its work on the treatment of prisoners.

122. It is important to note that female prisoners in Tonga are kept separately from the male prisoners.

123. There is an increase in the number of female prison officers and prison officers are now more exposed to a lot of training with regards to the rights of prisoners.

6. Consider national, regional and international support to the promotion of portable water and sanitation⁷⁶

124. The Ministry of Lands and Survey introduced the *Water Resources Bill 2016* to the Legislative Assembly. This Bill was focused on looking at the ownership and management of water resources and powers of the Ministry over the water resources. However due to strong oppositions from the general public, this Bill was referred back to the Ministry.

E. National human rights mechanism

Pursue its efforts to create a national human rights institution in compliance with Paris Principles⁷⁷

125. For small islands states including Tonga, the establishment of a national human rights institution is still not feasible financially and technically.

126. However several actions taken by the Government are in line with the Paris Principles.

127. The Legislative Assembly passed an amendment to the *Commissioner for Public Relations Act 2001* in 2016. This amendment re-named the Commissioner of Public Relations as the Ombudsman, this change is to ensure that Tonga is in line with international references to the ombudsman.

128. The Ombudsman's Office is now working on public awareness, this is by conducting community outreach programs and television programs all throughout Tongatapu and the outer islands, for instance in August 2017, the office conducted 29 outreach programs⁸¹.

129. The increase in awareness in the roles of the ombudsman is reflected in the increase in the number of complaints the Office is now taking:

<i>Complaints made to the ombudsman's office⁸²</i>	
Year	No. of complaints
2011-2012	16 complaints
2012-2013	10 complaints
2013-2014	48 complaints
2015	Phone complaints (25) Visits complaints (45) Written complaints (23) 93 complaints

130. The Legislative Assembly passed an amendment to the *Anti-Corruption Commissioner Act 2007* in 2016, to allow for the Ombudsman to become the temporary Anti-Corruption Commissioner to revive the Commissioner role. However the Royal Assent for this Act was deferred for further clarifications.

131. Tonga signed the *Members of Parliament Denarau 2015 Declaration on Human Rights and Good Governance* in 2015. By signing this MPs were committed to enhancing conventions and laws which enhance good governance and the realisation of human rights for all Pacific people.⁸³

132. Tonga is a member of the International Ombudsman Institute Conference and Tonga has made a commitment in the Bangkok Declaration to give constitutional status to Ombudsman institutions. The Bill for this change was successfully passed by the Government Law Committee, but it has not been put forward to Cabinet and the Legislative Assembly due to the dissolution of the Legislative Assembly in August 2017.

133. Tonga was represented at the United Nations Office on Drugs and Crime (UNODC) Anti-Corruption Advanced Investigations Workshop in 2017.

F. Promotion and protection of human rights, education and public awareness

1. Promote social and economic development to eliminate poverty⁸⁴

134. In 2016 Government initiated a "A'u ki ai" cash assistance to persons with disabilities.

135. NGOs initiate programmes like TYTE to encourage youth employment and support.

2. Develop institutional framework to promote and protect human rights⁸³

136. Human Rights issues are enshrined in the institutional frameworks of Tonga to promote and protect human rights. For instance the Climate Finance and Risk Governance Assessment has a Gender and Social Inclusion analysis.

3. Consider standing invitation to the special procedures⁸⁴

137. Tonga continues to welcome special rapporteurs depending on the political will of the time.

IV. Challenges which would require the support of the international community

138. Considerations for legislative amendments to implement the provisions of CAT include revision to laws - Constitution of Tonga, Criminal Offences Act, Tonga Police Act 2010, Prison Act 2010, Extradition Act, Royal Tonga Armed Forces and others. A domestic roadmap is seeking that support from inter-governmental institutions and assistance from OHCHR, APT, SPC – RRRT and others.

Notes

¹ *Report on the Second UPR Report*, Tonga, Cabinet Decision number 406 of 10 May, 2013.

² Cabinet Decision number 45 of 27 January, 2012.

³ Recommendation 79.7 (Norway); 79.8 (Switzerland); 79.9 (Timor Leste); 79.10 (Turkey)(UK and Northern Ireland); 79.12 (Argentina); 79.16 (Costa Rica); 79.18 (Slovakia); 79.44 (Italy); 79.45 (Argentina); 81.15 (Norway); 81.16 (Spain); 81.18 (Australia); 81.19 (Chile); 81.20 (France); 81.21 (Slovakia); 81.22 (Italy); 81.23 (Costa Rica); 81.24 (France); 81.25 (Slovenia); 81.26 (Mexico).

⁴ Cabinet Decision No. 598 of 14 June 2017.

⁵ *Rex v Hala'ufia & ors* (Unreported), CR35,36,91,92,93-13, Cato J).

⁶ s.146 *Criminal Offences Act* [Cap 18] (Tonga).

⁷ Peter Creighton (editor) *Pacific Human Rights Law Digest*, Volume 3, PHRLD (2011) 46.

⁸ Regulation 40(4) *Education (Schools and General Provisions) Regulations 2002* (Tonga).

⁹ Recommendation 79.1 (Bhutan); 79.2 (Indonesia); 79.3 (Brazil); 79.4 (Philippines); 79.5 France; 79.6 (Japan); 79.7 (Norway); 79.8 (Switzerland); 79.9 Algeria, Viet Nam) (Timor Leste); 79.10 (Australia, UK) (UK, Northern Ireland) (Turkey); 79.11 (Chile); 79.12 (Argentina); 79.13 (Hungary); 79.14 (Latvia); 79.15 (France); 79.17 (Mexico); 79.18 (Slovakia); 79.27 (Uruguay); 79.28 (Guatemala); 81.17 (United Kingdom of Great Britain and Northern Ireland); 81.18 (Australia, United Kingdom of Great Britain and Northern Ireland).

¹⁰ Cabinet Decision No. 598 of 14 June 2017.

¹¹ s.98 *Education Act 2013* (Tonga).

¹² s. 99 *Education Act 2013* (Tonga).

¹³ s.111 *Education Act 2013* (Tonga).

¹⁴ Part II, *Employment Relations Bill 2013* (Tonga).

¹⁵ Cabinet Decision No 368 of 6 June 2014.

¹⁶ s.5 *Pornography Control Act 2012* (Tonga).

¹⁷ s.115A *Criminal Offences Act* [Cap 18] (Tonga).

¹⁸ s.81 *Criminal Offences Act* [Cap 18] (Tonga).

¹⁹ s.121 *Criminal Offences Act* [Cap 18] (Tonga).

²⁰ Recommendation 79.14 (Latvia); 79.15 (France); 79.16 (Costa Rica); 79.19 (Slovakia); 79.20 (Estonia).

²¹ Recommendation 79.21 (Philippines).

²² Kingdom of Tonga has become the 187th International Labour Organization (ILO) Member State² (25 February 2016) http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_455305/lang--

- en/index.htm (Accessed 18 October 2017).
- ²³ Kingdom of Tonga has become the 187th International Labour Organization (ILO) Member State' (4 March 2016) <http://www.mic.gov.to/news-today/press-releases/5871-kingdom-of-tonga-has-become-the-187th-international-labour-organization-ilo-member-state> (Accessed 18 October 2017).
- ²⁴ Government of Tonga Budget Statement for Year ending 30th June 2018 (2017) 32.
- ²⁵ Government of Tonga Budget Statement for Year ending 30th June 2018 (2017) 22.
- ²⁶ Recommendation 79.23 (Viet Nam), 80.1 (Malaysia).
- ²⁷ 'Tonga's new Prime Minister -elect' - 'Akilisi Pohiva' (29 December 2014) <http://www.pmo.gov.to/tongas-new-prime-minister-elect-akilisi-pohiva/> (Accessed 18 October 2017).
- ²⁸ 'Notion of a Motion for a Vote of No Confidence in the Prime Minister' (14 February 2017) <http://www.mic.gov.to/news-today/press-releases/6541-notice-of-a-motion-for-a-vote-of-no-confidence-in-the-prime-minister> (Accessed 18 October 2017).
- ²⁹ 'Tonga Prime Minister Survives Vote of No-Confidence' (27 February 2017) <http://www.pirreport.org/articles/2017/02/27/tonga-prime-minister-survives-vote-no-confidence> (Accessed 18 October 2017).
- ³⁰ Gazette Supplement Extraordinary No. 14 of 25 August 2017.
- ³¹ Recommendation 79.24 (Cuba).
- ³² Recommendation 79.32 (Burundi), 79.33 (New Zealand), 79.34 (Slovenia), 79.35 (Thailand), 79.36 (Algeria), 81.4 (Trinidad and Tobago).
- ³³ *Fihani Uasike Latu & anors v. Etuate Sungulu Lavulavu* (Unreported, CV 90/14, LCJ Paulsen, 29 January 2015).
- ³⁴ Tonga Strategic Development Framework II, Ministry of Finance & National Planning, Government of Tonga (TSDF II) p 118.
- ³⁵ TSDF II p 119.
- ³⁶ TSDF II p 119.
- ³⁷ TSDF II p 120.
- ³⁸ TSDF II p 120.
- ³⁹ Chief Secretary and Secretary to Cabinet, Prime Ministers Office, CEO, Ministry of Finance and National Planning, CEO, Ministry of Lands and Natural Resources, CEO, Ministry of Internal Affairs, CEO, Ministry of Justice, CEO, Office of the Public Service Commission, CEO, Ministry of Tourism, (former) CEO, Ministry of Commerce, Consumer Affairs, Trade Innovation and Labour, CEO, Ministry of Agriculture, Forests, Fisheries and Food, Clerk of Parliament, Legislative Assembly, Lord Chamberlain, Office of the Lord Chamberlain.
- ⁴⁰ 'Practice Parliament for Women aspires women to be political leaders' (7 April 2014) <http://www.parliament.gov.to/media-centre/latest-news/latest-news-in-english/225-practice-parliament-for-women-aspires-women-to-be-political-leaders-hm-queen-says> (Accessed 18 October 2017).
- ⁴¹ Recommendation 79.37 (Maldives), 79.38 (United States of America), 79.39 (Norway), 79.40 (Australia), 79.41 (Canada), 79.42 (New Zealand) (Singapore), 79.43 (Spain), 80.2 (Norway), 80.3 (Norway).
- ⁴² *Family Protection Act 2013* (Tonga) Preamble.
- ⁴³ s 28(1) *Family Protection Act 2013* (Tonga).
- ⁴⁴ *Evidence (Amendment) Bill 2016* (Explanatory Notes).
- ⁴⁵ 'National Launching of the "Orange Day"' (25 June 2014) <http://www.mic.gov.to/news-today/press-releases/4997-national-launching-of-the-orange-day> (Accessed 19 October 2017).
- ⁴⁶ 'Tonga Police commemorate White Ribbon Day' (25 November 2016) <http://www.mic.gov.to/news-today/press-releases/6431-tonga-police-commemorate-white-ribbon-day> (Accessed 19 October 2017).
- ⁴⁷ Recommendation 79.40 (Australia).
- ⁴⁸ Tonga Police Force.
- ⁴⁹ His Majesty's Armed Forces, Tonga.
- ⁵⁰ Recommendation 79.48 (France).
- ⁵¹ Kingdom of Tonga National Integrated Sexual and Reproductive Health Strategic Plan (2014-2018) (2014) http://www.aidsdatahub.org/sites/default/files/publication/2014-2018_Tonga_National_Integrated_Sexual_and_Reproductive_Health_Strategic_Plan.pdf (Accessed 19 October 2017).

- ⁸² 'Ministry of Health host 7 day workshop on Family Planning Guidelines and Sexual Reproductive Health Policy' (25 July 2017) <http://www.mic.gov.to/news-today/press-releases/6817-ministry-of-health-host-7-day-workshop-on-family-planning-guidelines-and-sexual-reproductive-health-policy> (Accessed 19 October 2017).
- ⁸³ Recommendation 79.32 (Burundi), 81.5 (Argentina), 81.6 (Norway), 81.7 (Spain), 81.8 (USA), 81.9 (Canada), 81.10 (France), 81.11 (Norway).
- ⁸⁴ Tonga Strategic Development Framework II, Ministry of Finance & National Planning, Government of Tonga (TSDF II) p.118.
- ⁸⁵ TSDF II p.119.
- ⁸⁶ TSDF II p.119.
- ⁸⁷ TSDF II p.120.
- ⁸⁸ TSDF II p.120.
- ⁸⁹ 'Pacific LGBTQI Human Rights Conference' (11-14 May 2015) <http://arc-international.net/wp-content/uploads/2011/08/SOGIHR-Report-final.pdf> (Accessed 19 October 2017).
- ⁹⁰ Tonga Laitis' Association Strategic Plan 2016- 2020 (2016) 3.
- ⁹¹ Tonga Laitis' Association Strategic Plan 2016- 2020 (2016) 3.
- ⁹² 'Tonga campaign aims to empower transgender students' (27 March 2017) <http://www.radionz.co.nz/international/pacific-news/327554-tonga-campaign-aims-to-empower-transgender-students> (Accessed 19 October 2017).
- ⁹³ Recommendation 79.22 (Timor-Leste), 79.22 (Timor-Leste), 79.53 (Slovakia), 81.28 (USA).
- ⁹⁴ *Nationality (Amendment) Act 2017*.
- ⁹⁵ Cabinet Decision number 1272 of 30 November 2016 and Cabinet Decision number 42 of 27 Jan 2017. Cabinet Sub-Committee comprised of the following members: Minister of Justice (Chair), Minister of Police (Deputy Chair), Commissioner of Police, Director of Public Prosecutions, Head of Customs, Head of Prisons, Secretariat of the Cabinet Sub-Committee – Ministry of Justice, any other member can be co-opted.
- ⁹⁶ Recommendation 79.46 (Canada).
- ⁹⁷ *Tonga launched its Freedom of Information Policy*, 04 July 2012, Ministry of Information and Communication.
- ⁹⁸ *Tonga National Right to Information Bill*, 10 April 2014, Ministry of Information and Communication.
- ⁹⁹ *Transcript of the Speech by the Prime Minister of Tonga, Lord Tuʻiʻuakamalo, Minister for Information, at the Opening Ceremony of the first marking of the International Archives Day in Tonga on 10 June 2013*, Prime Minister's Office.
- ¹⁰⁰ Recommendation 79.49 (Indonesia), 79.50 (Malaysia), 79.51 (Singapore), 79.52 (Bhutan).
- ¹⁰¹ Recommendation 81.12 (Chile), 81.13 (Slovenia), 81.14 (Hungary).
- ¹⁰² Royal Land Commission Final Report (2012) 55.
- ¹⁰³ Royal Land Commission Final Report (2012) 55.
- ¹⁰⁴ Royal Land Commission Final Report (2012) 56.
- ¹⁰⁵ Royal Land Commission Final Report (2012) 58.
- ¹⁰⁶ Recommendation 81.27.
- ¹⁰⁷ Recommendation 79.47 (Spain).
- ¹⁰⁸ Recommendation 81.1 (Burundi) (Uruguay), 81.2 (Angola), 81.3 (Turkey).
- ¹⁰⁹ Ombudsman's Office *Fangona 'a e Ompatmeni Newsletter* (August 2017) 2.
- ¹¹⁰ Ombudsman's Office *Records* (2011- 2015).
- ¹¹¹ Members of Parliament *Demarau 2015 Declaration on Human Rights and Good Governance*.
- ¹¹² Recommendation 79.25 (China).
- ¹¹³ Recommendation 79.26 (Bhutan).
- ¹¹⁴ Recommendation 79.29 (Guatemala), 79.30 (Latvia), 79.31 (Maldives).